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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/904,692	07/13/2001	Raymond Francis Jakubowicz	961_002	4749
20874	7590	03/29/2005	EXAMINER	
WALL MARJAMA & BILINSKI			ALEXANDER, LYLE	
101 SOUTH SALINA STREET			ART UNIT	
SUITE 400			PAPER NUMBER	
SYRACUSE, NY 13202			1743	

DATE MAILED: 03/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/904,692

**Applicant(s)**

JAKUBOWICZ ET AL.

**Examiner**

Lyle A Alexander

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-22 and 55-61 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-22 and 55-61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 2-22 and 55-61 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, the original specification describes first and second drives mechanisms, but is silent to these mechanisms operating in first and second horizontal directions.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-22 and 55-61 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear how the first and second drive mechanisms operate in first and second horizontal directions.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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Claims 2-22 and 55-61 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Miller, Muszak et al. or Carey et al.

See the appropriate paragraph of the 8/18/04 Office action.

In light of the above 35 USC 112 issues, the claims are best understood as concentric rings which have been read on the claimed arrays. Each ring has means to add the sample in an orthogonal direction. Also, each ring has relative movement to teach other in the horizontal axis (e.g. when the ring rotates, it moves in a horizontal direction relative to the other ring).

### ***Response to Arguments***

Applicant's arguments filed 1/14/05 have been fully considered but they are not persuasive.

In light of the above 35 USC 112 issues, the issues of horizontal movement are not fully understood and it appears the original disclosure does not support this language. However, to further the action the Office will comment on the horizontal movement issues without agreeing horizontal movement is supported by the original disclosure.

The Office maintains all of the cited references teach horizontal movement between the first and second arrays/trays. The relative horizontal movement occurs when the arrays/trays rotate upon their axis and the relative positions of each change in a horizontal direction. This has been properly read on the instant language of a first and second horizontal directions.

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Applicants' state Miller, Muszak et al. and Carey et al. all teach shuttling of the slide elements only by virtue of horizontal movement of the rotors. The instant claim language is open (e.g. comprising) and does not exclude additional horizontal movements.

Applicants' state none of the cited prior art teaches slide elements loaded and tested synchronously between load stations on a common horizontal plate using drive mechanisms that act in substantially orthogonal directions. It is not clear if the pending claims are commensurate in scope with these remarks. However, the art does teach elements being loaded in synchronous manner (e.g. the loading occurs while the device is performing other functions and does not stop for the loading) in a direction orthogonal to the direction of rotation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lyle A Alexander  
Primary Examiner  
Art Unit 1743

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